

**REMARKS**

Claims 24-43 were pending in this application.

Claims 24-39 have been rejected.

Claims 40-43 have been objected to.

Claims 24 and 30 have been amended as shown above.

Claims 24-43 remain pending in this application.

Reconsideration and full allowance of Claims 24-43 are respectfully requested.

**I. ALLOWABLE CLAIMS**

The Applicant thanks the Examiner for the indication that Claims 26, 27, 32, 33, 36, 37, and 40-43 would be allowable if rewritten in independent form to incorporate the elements of their respective base claims and any intervening claims. Because the Applicant believes that the remaining claims in this application are allowable, the Applicant has not rewritten Claims 26, 27, 32, 33, 36, 37, and 40-43 in independent form.

**II. REJECTION UNDER 35 U.S.C. § 112**

The Office Action rejects Claims 24-37 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention.

The Office Action rejects Claims 24, 26, 27, 29, 30, 32, 33, 35, 36, and 37 because these claims recite the phrase “capable of.” The Office Action asserts that the phrase “capable of” is

indefinite because “it is not a positive recitation.” The Applicant respectfully traverses this assertion.

The phrase “capable of” describes a function that a particular element in the claims must be able to perform. For example, Claim 24 recites a “first current source” that is “capable of injecting a first charging current onto a loop filter.” Claim 24 is crystal clear – it recites a current source that is able to inject a charging current onto a loop filter.

Moreover, the Applicant respectfully notes that numerous U.S. patents use the phrase “capable of.” As of December 20, 2004, a search of the U.S. Patent and Trademark Office database reveals that 198,733 issued U.S. patents use the phrase “capable of” in the claims. As a result, the Applicant respectfully submits that the phrase “capable of” does not render the claims indefinite.

The Office Action also asserts that Claims 26, 27, 32, 33, and 36 are misdescriptive. The Applicant has amended Claims 24 and 30 to clarify the “first control signal” and the “second control signal.” Based on this, the Applicant respectfully submits that the claims accurately describe the Applicant’s invention.

Accordingly, the Applicant respectfully requests withdrawal of the § 112 rejection.

### **III. DOUBLE PATENTING REJECTION**

The Office Action rejects Claims 24, 25, 28-31, 34, 35, 38, and 39 under the judicially created doctrine of obviousness type double patenting. In particular, the Office Action rejects Claims 24, 25, 28-31, 34, 35, 38, and 39 over Claims 1, 4, and 10 of U.S. Patent No. 6,664,829.

The Applicant has included a Terminal Disclaimer with this AMENDMENT AND RESPONSE to overcome the double patenting rejection. The Applicant respectfully requests withdrawal of the double patenting rejection.

IV. **CONCLUSION**

The Applicant asserts that all pending claims in the application are in condition for allowance and respectfully requests full allowance of such claims.

SUMMARY

If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *wmunck@davismunck.com*.

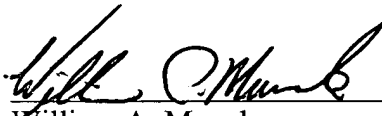
The Commissioner is hereby authorized to charge any additional fees connected with this communication (including any extension of time fee) or credit any overpayment to Davis Munck Deposit Account No. 50-0208.

Respectfully submitted,

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